

COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT
ACT OF 1987

SEPTEMBER 28 (legislative day, SEPTEMBER 26), 1988.—Ordered to be printed

Mr. INOUE, from the Select Committee on Indian Affairs and on behalf of Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

JOINT REPORT

[To accompany S. 1415]

The Select Committee on Indian Affairs and the Committee on Energy and Natural Resources, to which was jointly referred the bill (S. 1415) to facilitate and implement the settlement of Colorado Ute Indian reserved water rights claims in southwest Colorado, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

SELECT COMMITTEE ON INDIAN AFFAIRS AMENDMENTS

The amendments reported by the Select Committee on Indian Affairs are as follows:

1. Section 4 is amended to read as follows:

SEC. 4. TRIBAL RESERVED WATERS.

(a) WATER FROM ANIMAS-LA PLATA DOLORES PROJECTS.—

The Secretary is hereby authorized to use the Animas-La Plata and Dolores Projects to supply reserved water to the Tribes in accordance with the Agreement.

(b) APPLICATION OF FEDERAL RECLAMATION LAWS.—The reserved water supplied to the Tribes or their lessees from the Dolores and Animas-La Plata Projects shall be treated in all respects in the same manner, except as provided in the Agreement, as the Tribes' other reserved waters.

2. Section 5 is amended to read as follows:

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5313-86
5413-20

SEC. 5. NONAPPLICABILITY OF THE INDIAN INTERCOURSE ACT.

The provisions of section 2116 of the Revised Statutes (25 U.S.C. 177) shall not apply to any water rights confirmed in the Agreement and the final consent decree. Nothing in this section shall be considered to amend, construe, supersede, or preempt any State law, Federal law, interstate compact, or international treaty that pertains to the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

3. On page 9, line 16, strike "Tribal" and insert in lieu thereof "Secretarial".

4. On page 9, line 21, before "revenues" insert "gross".

5. On page 10, line 16, strike "which are to" and insert in lieu thereof "shall".

6. On page 10, lines 18 through 20, strike "shall be repaid in 30 equal annual installments from the date that the water is first available for use".

7. On page 13, line 16, after "arising from" insert "the approval of an economic development plan or from".

8. On page 13, line 22, after "such funds," insert "or the revenue from any water use contract,".

9. On page 14, line 5, after "procedures" insert "governing the water rights confirmed in the Agreement and the Final Consent Decree to the extent provided".

10. On page 14, line 19, before "The design" insert "(a) IN GENERAL.—".

11. On page 14, line 25 and on page 15, lines 1 and 2 strike "Any preference provided the Tribes shall not detrimentally affect the construction schedules of the Dolores and Animas-La Plata Projects.".

12. On page 15, after line 2, insert the following new subsection (b):

(b) APPLICATION.—This section shall not apply if the application of this section would detrimentally affect the construction schedules of the Dolores and Animas-La Plata Projects.

13. On page 15, line 4, strike "(a) IN GENERAL.—".

14. On page 15, lines 1 through 4, strike:

(b) INDIVIDUAL MEMBERS OF TRIBES.—Any entitlement to reserved water of any individual member of either Tribe shall be satisfied from the water secured to that member's Tribe.

15. On page 15, after line 9, insert the following new section 12:

SEC. 12. INDIVIDUAL MEMBERS OF TRIBES.

Any entitlement to reserved water of any individual member of either Tribe shall be satisfied from the water secured to that member's Tribe.

16. On page 15, line 10 renumber section "12" as section "13".

COMMITTEE ON ENERGY AND NATURAL RESOURCES AMENDMENTS

The Committee on Energy and Natural Resources adopted S. 1415 with the amendments reported by the Select Committee as original text for the purpose of further amendment and reported the following amendments to that text:

1. Section 4 is revised to read as follows:

SEC. 4. PROVISION OF WATER TO TRIBES.

WATER FROM ANIMAS-LA PLATA, DOLORES PROJECTS.—
The Secretary is authorized to supply water to the Tribes from the Animas-La Plata and Dolores Projects in accordance with the Agreement except that—

(a) Nothing in this Act or in the project purpose may be construed to extend to or permit or prohibit the sale, lease, disposal, or other use of such water by the Tribes. Any such use shall be governed solely by the provisions of this Act and Agreement, to the extent that the provisions of the Agreement are consistent with the Act.

(b) The water supplied to the Tribes from the Animas-La Plata Project and Dolores Project shall be subject only to such Federal reclamation laws and only to the extent needed to effectuate the terms and conditions contained in Article III, Section A, subsections 1 and 2 and Article III, Section B, subsection 1 of the Agreement.

2. Section 5 is revised to read as follows:

SEC. 5. USE OF WATER.

(a) The provisions of section 2116 of the Revised Statutes (25 U.S.C. 177) shall not apply to any water rights confirmed in the Agreement and the final consent decree: *Provided*, That nothing in this subsection shall be considered to amend, construe, supersede or preempt any State law, Federal law, interstate compact, or international treaty that pertains to the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

(b) None of the waters from the Animas-La Plata or Dolores Projects may be transferred into the Lower Basin unless water held by non-Federal, non-Indian holders of State water rights could be so transferred either under existing law or by subsequent agreement of the Compact States: *Provided*, That nothing in this section shall be construed as authorizing such transfers either out of Basin or out of State in contravention of State law.

(c) The use of the rights referred to in subsection (2) within the State of Colorado shall be governed solely as provided in the Agreement and at the time that any of such water is hereafter used off the reservation of the respective Tribe, such rights are hereby declared to be a Colorado State water right and shall be fully subject to State laws, Federal laws, interstate compacts, and international

treaties applicable to the Colorado River and its tributaries including the appropriation, use, development, storage, regulation, conservation, exportation, quality, allocation or use of those waters. The characterizations of any water rights described in the Agreement which may be used off the reservation of the respective Tribe as either "project reserved right" or "non project reserved right" is hereby expressly disapproved and any Federal reserved claim to such water right shall be extinguished when the final consent decree is entered.

3. Section 11 is revised to read as follows:

SEC. 11. RULE OF CONSTRUCTION.

The Agreement shall be construed in a manner consistent with this Act and the Agreement is hereby modified accordingly. Nothing in the Agreement or this Act shall amend, construe, supersede, or preempt any State laws, Federal laws, interstate compacts, and international treaties which pertain to the interstate allocation of the uses of waters of the Colorado River and its tributaries. This Act is intended solely to permit settlement of existing and prospective litigation among the signatory parties to the Agreement.

4. At the end of the bill insert the following new section 14:

SEC. 14. VOIDING OF AGREEMENT.

The United States shall not exercise its right to void the Agreement pursuant to Article VI, section C, subsection 2 thereof.

PURPOSE

The purpose of S. 1415 is to provide for the settlement of water rights claims by the Ute Mountain Ute and the Southern Ute Indian Tribes by approval of a settlement agreement among the Tribes, the United States, the State of Colorado, and other parties; to provide the necessary authorities to implement the settlement agreement; and to establish a tribal development fund.

BACKGROUND AND NEED

The Ute Indian Reservation in southwestern Colorado was established in 1868.

In 1976, the United States filed claims on behalf of the two Ute Tribes to all of the water from the rivers of southwestern Colorado. In December 1984, negotiations began in an attempt to reach a settlement of the claims. In 1985, Congress required that water users in Colorado and New Mexico enter into a cost-sharing agreement with the Secretary of the Interior as a precondition for receiving federal funds for construction of the Animas-La Plata Project (P.L. 99-88, section 4). The Administration insisted that such agreement be part of the Indian water rights settlement negotiations.

A binding cost-sharing agreement and an agreement in principle on Indian water rights was entered into on March 14, 1986, and signed by the State of Colorado, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, the Animas-La Plata Water

Conservancy District, the Dolores Water Conservancy District, the Florida Water Conservancy District, the Mancos Water Conservancy District, and the Southwestern Water Conservation District. On June 30, 1986, the U.S. Department of the Interior announced that the Administration had accepted the agreement for funding the Animas-La Plata Project.

Subsequently, on December 10, 1986, all parties, including the Federal government, reached agreement on settlement of the Indian water rights claims which included the cost-sharing agreement. This settlement agreement, which is embodied in S. 1415, provides that the Ute Mountain Ute Indian Tribe will receive the beneficial use of water from the Dolores Project, from the Animas-La Plata Project, and from three streams flowing through the reservation. The Southern Ute Indian Tribe will receive the beneficial use of water from the Animas-La Plata project and from other water sources that serve the reservation. Integral to the settlement is construction of the Animas-La Plata Project and the completion of the Dolores Project irrigation facilities. The additional storage and water supply that will be made possible with such construction will insure that sufficient water will be available for the future needs of the tribes and the current needs of the non-Indian communities.

Under the settlement, a \$60.5 million development fund will be set aside for tribal water resource development. The State of Colorado will contribute \$5 million and will construct a domestic pipeline to the Town of Towaoc. Towaoc is headquarters of the Ute Mountain Ute Indian Tribe and the only town on the reservation. Water has been trucked to the Town of Towaoc for domestic purposes for 40 years.

In order to implement the Agreement, the Federal Government needs to enact legislation dealing with the authority of the Secretary of the Interior to deliver water from the Animas and Dolores Projects and to specify the extent to which Reclamation Law would apply to the water provided to the Tribes, to provide for the repayment of the allocable costs, to waive the Indian Intercourse Act to permit the Tribes to use the water rights provided in the settlement agreement as provided in the Agreement, and to establish a Tribal Development fund.

Authorization for the Animas-La Plata project was included in the Colorado River Basin Project Act of 1968 which also authorized the Central Arizona project as well as other upper Colorado River Basin development projects. A provision in fiscal year 1985 Supplemental Appropriations Act made expenditure of funds for the project conditional upon the Secretary of the Interior and non-Federal parties entering into agreement for up-front cost sharing. Subsequently, the Departments of Justice and Interior insisted that settlement of the Tribal claims also be included. The settlement/cost sharing agreement was executed on June 30, 1986 and a repayment contract has been approved by the voters of the Animas-La Plata Water Conservancy District.

The project would be a multiple-purpose water resource development in the Upper Colorado River Basin in southwestern Colorado and Northwestern New Mexico. Municipal and industrial water would be furnished to Durango and to the rural La Plata area in

Colorado and to Farmington, Aztec, Bloomfield, and several smaller communities, as well as the Navajo Reservation in New Mexico.

Under the cost-sharing agreement, the project would be developed in two phases. The first phase would provide for irrigation service to 42,880 acres, municipal and industrial water service, and recreation and fish and wildlife features. The initial phase would cost \$379 million with Colorado contributing \$69 million. The second phase would provide for irrigation service to 24,580 acres, and additional recreation and fish and wildlife features. The second phase would cost \$132 million and would be financed entirely by non-Federal sources. Facilities for delivery of the water to the Reservations is included within the second phase.

S. 1415 was introduced on June 24, 1987, by Senators Armstrong, Wirth, Domenici, and Bingaman and was referred to the Select Committee on Indian Affairs. On July 9, 1987, S. 1515 was referred jointly to the Select Committee on Indian Affairs and the Committee on Energy and Natural Resources. A joint hearing by the Subcommittee on Water and Power and the Select Committee on Indian Affairs was held on December 3, 1987 (S. Hrg. 100-630).

A House companion measure, H.R. 2642 was introduced on June 10, 1987, by Congressman Campbell (Colorado) and 23 cosponsors and was referred to the House Committee on Interior and Insular Affairs. A hearing was held before the Committee on September 16, 1987 and the bill was ordered favorably reported by the Committee on June 29, 1988.

At the business meeting on April 28, 1988, the Senate Select Committee on Indian Affairs ordered S. 1415 favorably reported.

At the business meeting on August 4, 1988, the Senate Committee on Energy and Natural Resources ordered S. 1415 favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on April 28, 1988, by unanimous vote and with a quorum present, recommends that the Senate pass S. 1415 as amended.

The Senate Committee on Energy and Natural Resources, in open business session on August 4, 1988, by majority vote of a quorum present recommends that the Senate pass S. 1415, if amended, as described herein.

The rollcall vote on reporting the measure was 16 yeas, 3 nays as follows:

YEAS

Mr. Johnston
Mr. Bumpers*
Mr. Ford
Mr. Melcher*
Mr. Bingaman
Mr. Wirth
Mr. Fowler*
Mr. Conrad
Mr. McClure
Mr. Hatfield*

NAYS

Mr. Metzenbaum*
Mr. Bradley
Mr. Hecht

Mr. Weicker*
 Mr. Domenici
 Mr. Wallop
 Mr. Murkowski
 Mr. Nickles
 Mr. Evans

* Indicates vote by proxy.

COMMITTEE AMENDMENTS

The explanation of the amendments adopted by the Select Committee on Indian Affairs follows:

Committee Amendment No. 1. The Select Committee on Indian Affairs inserted a new Section 4 which authorizes the Secretary of the Interior to use the Animas-LaPlata and Dolores Projects to supply reserved water to the Tribes and provides that reserved water from the Dolores and Animas-LaPlata Projects will be treated the same as the Tribes' other reserve waters.

Committee Amendment No. 2. The following report language was proposed in the Committee by Senator DeConcini and was adopted by the Committee:

Section 5 of the bill as introduced has been amended by the Committee to eliminate any reference to the sale, exchange, lease or other disposition of water contemplated in the Agreement. This was a very contentious issue throughout the Committee deliberations on the implementation of the Settlement Agreement. The elimination of these references insures that this legislation does not, expressly or by implication, permit the sale, exchange, lease or other disposition of water outside the State of Colorado, as contemplated in the Agreement. Likewise, by waiving the Non-Intercourse Act, the Committee does not intend, expressly or by implication, to permit the sale, exchange, lease or other disposition of water outside the State of Colorado. Nor is it intended that this legislation affects any existing laws insofar as they pertain to, and only to, the sale, exchange, lease or other disposition of water from one State to another in the Colorado River Basin.

The following discussion of the issue addressed by Senator DeConcini's Report language has been included in the Committee's Report to reflect the understanding of the members of the Committee in adopting Senator DeConcini's report language:

The question of whether Indian tribes have the authority to sell or otherwise dispose of reserved water rights has not yet been resolved by the courts. Section 5 of S. 1415 as introduced decided this question in the affirmative by providing authority for the Tribe to enter into water use contracts to sell, exchange, lease, or otherwise dispose of water for periods of time not to exceed 50 years. The Committee substitute deleted this provision. Instead, the Committee amendment provides simply that the Indian Intercourse Act will not apply to tribal reserved waters but that any and all other laws pertaining to the Colorado River

are unaffected by the bill. The Indian Intercourse Act of 1834 prohibits the conveyance of Indian land without Congressional consent. The Committee's view is that the Intercourse Act probably applies also to conveyances of water rights. See *New Mexico v. Aamodt*, 537 F. 2d 1102, 1111 (10th Cir. 1976).

The intention of the Committee amendment is for the question of the marketability of Indian water rights to be left to future litigation. Simply put, the bill as ordered reported and its legislative history are neutral on the question. The Committee does not intend for this amendment to the bill as introduced to be construed to prohibit, either expressly or by implication, the sale, exchange, lease or other disposition of water outside the State of Colorado, as contemplated in the Agreement. Likewise, as previously mentioned, by waiving the Indian Intercourse Act the Committee does not intend, either expressly or by implication, to authorize the sale, exchange, lease or other disposition of water outside the State of Colorado.

Committee Amendments Nos. 3-16. The remainder of the Committee amendments are technical in nature and are self-explanatory.

The Energy and Natural Resources Committee's discussion of the amendment made to subsection (c) of section 5 states that "subsection (c) provides that the water rights confirmed in the Agreement will be governed solely as provided in the Agreement, and that the claims with respect to Federal reserved rights will be extinguished upon entry of the final consent decrees."

The explanatory provision of the Committee amendment would indicate that *any* Federal reserved right would be extinguished upon entry of the final consent decree, including, under the Energy Committee's characterization of Indian reserved water rights as Federal reserved water rights, the extinguishment of Indian reserved water rights. While the members of the Select Committee do not agree with the characterization of Indian reserved water rights as being identical to Federal reserved water rights, any express assertion as is contained in the explanation of the energy Committee amendment to section 5(c) that such rights will be extinguished upon entry of the final consent decree, would be totally inconsistent with the understanding of the parties and all who have been involved in the Congress' consideration of S. 1415, i.e., that while water is being used on the tribes' reservations or once water has ceased to be used off the reservation, the water has all the characteristics that accord to an Indian water right when used on the reservation. To represent that the tribes' claims based on their reserved rights are extinguished upon entry of the final consent decree, is to leave the tribes with no legal recourse should any of the benefits contemplated for the tribes under the terms of the settlement fail to be forthcoming.

The Select Committee on Indian Affairs strongly disagrees with the concepts embodied in the Energy and Natural Resources Committee's discussion of the Committee's amendment number 2 with

respect to the assertion that Federal and Indian water rights have identical characteristics. The prevailing view among recognized legal scholars is that Indian water rights differ significantly from Federal reserved water rights. These differences include the notion that Indian water rights are private in nature, which constitute a compensable property interest.

It is well established that Indian water rights are not subject to traditional concepts of western water law. These rights cannot be forfeited for nonuse, and are not subject to abandonment. The express implication of the statement attributed to Senators McClure and Wallop suggests that the justification for a reserved water right is defeated once the water is no longer needed.

The terms of the settlement reached among the parties contemplate that the tribes involved in the settlement may elect to lease water for off-reservation use. Further, the settlement contemplates that once water ceases to be used off the reservation, and a tribe applies to resume use of the water on reservation, that the water will have all of the characteristics of an Indian reserved water right during its use on the reservation. The quotation of Senators Wallop and McClure would seem to suggest that the Indian tribes involved in this settlement would lose their reservation's reserved rights to water, upon the tribe's election to lease the water for use off reservation. The Select Committee expressly rejects the premise that by action of tribal leasing or other disposition of water, the reserved nature of the Indian water right is stripped of its character, or that such leasing or other disposition implies that the water is no longer needed to sustain the purposes for which the reservation was established.

Moreover, in adopting legislation which implements an agreement amongst parties to settle outstanding legal claims to water, the Congress does not establish general law. Each agreement, and the law which implements it, does not create legal precedent for any other purpose.

The discussion of differing views which is highlighted in the explanations of amendments by each Committee represent an ongoing debate regarding what the law of Federal reserved water rights and Indian reserved water rights is or should be. These matters remain unresolved, and are beyond the scope of the legislation that confirms the agreement to settle the water rights of the Colorado Ute Indians. Thus, neither this legislation or discussions contained in the Committee report should be construed to be a final disposition of unresolved matters of law as they relate to the general body of the Federal reserved water rights law or to the general body of Indian reserved water rights law.

The explanation of the amendments adopted by the Energy and Natural Resources Committee follows:

The Committee on Energy and Natural Resources adopted the measure with the amendments reported by the Select Committee as original text for the purpose of further amendments. The Committee amendments to that text are:

1. The first amendment would insert a new section 4 in lieu of the language of the measure as introduced and as amended by the Select Committee. The amendment deletes

all reference to the terms "project reserved water" contained in the measure as introduced and the term "tribal reserved water" in the amendment offered by the Select Committee. With respect to the water provided to the Tribes from the stored water in the project, the *only* purpose associated with the project is storage and delivery of the water to the Tribes in accordance with the agreement. The Committee specifically rejects the characterization of the water as anything other than water stored in the project. The settlement of the Indian water rights claims by providing water from the projects in lieu of continued litigation over claims to water appurtenant to the reservations does not alter the nature of the project purposes or the nature of the rights held in the water stored in the project. The Committee specifically rejects any insinuation that a purpose of the project is now to deliver marketable water to the Tribes, as well as the suggestion made by the Department that the provision of an assured supply of wet water from the projects is only a "paper" right and not a valuable right. The Federal Government has no obligation to create an artificial market nor to assist in transforming water into cash. Subsection (a) makes it clear that there will be no argument that there is an implied project purpose to deliver "marketable" water and that, relying on cases such as *City of Fresno v. California*, 372 U.S. 627 (1963), *Ivanhoe Irrigation District v. McCracken*, 357 U.S. 275 (1958), or *California v. United States*, 438 U.S. 645 (1978), the limitations imposed by State Law, Interstate Compacts, or other measures relating to the allocation and use of the waters of the Colorado River do not apply to the water stored in the project and delivered to the Tribes. The amendment to section 5 of the measure makes it clear that these waters are held solely by the Tribes as a *State water right* and are fully subject to the Law of the River. With respect to the use of such state water rights, the Tribes are in no different position than any other holder of a water right from the Colorado River in the State of Colorado.

Subsection (b) is designed to make it clear that only those portions of Reclamation law needed for the storage and delivery of the water will apply. The federal government is assisting in the settlement by providing storage. That storage does not itself trigger the full extent of Reclamation law.

2. The second amendment inserts a new section 5 in lieu of the matter proposed in the measure as introduced and the amendment recommended by the Select Committee. The Committee retains the waiver of the Indian Intercourse Act reported by the Select Committee but limits the waiver to those rights held by the Tribe as State water rights as described in subsection (c). The Committee specifically rejects the characterization of the water rights confirmed in the proposed settlement agreement as either "project reserved water" or "non project reserved water"

and cautions against further attempts to cloud an already obscure area with new and undefined terms which hint of further erosion of State jurisdiction over water rights and their use. The Committee defers to the Select Committee on the deletion of the provisions relating to the Secretary's responsibilities in approving water contracts, but wishes to emphasize that had such language been retained it would not have overcome the injunction laid on the Secretary in the decree in *Arizona v. California*, 376 U.S. 340 (1964) as amended and supplemented with respect to delivery of water from the Colorado in the Lower Basin.

Congress understands that there are differences of opinion among the water using entities in the Colorado River Basin as to whether the waters of the Colorado River allocated to the Upper Basin by the Colorado River Compact of 1922 may or may not be transferred from the Upper Basin into the Lower Basin. Congress takes no position as to which view is correct. This language is designed to be completely neutral with respect to the issue as to whether interbasin transfers are or are not permitted under the "Law of the River". The water rights held by the Tribes for use off reservation shall be in all respects identical with any water rights held by non-Federal, non Indian persons from the State of Colorado. To the extent that at any time in the future a water right held by a non Indian, non-Federal party from Colorado may be transferred into the Lower Basin, the Tribes should also be able to participate in such transfers in the same manner as other water right holders. If, for example, either by Court interpretation of the 1922 Compact or an agreement of the seven Compact States (consented to by Congress as appropriate) interbasin transfers are permitted and Colorado law permits such transfers, the Tribes are not to be prejudiced. Conversely, even if such transfers are permitted and Colorado law prohibits exportation in a Constitutionally permissible manner, this section does not carve out an exception for the Tribes. They, as well as other holders of water rights from the State of Colorado, will be bound by Colorado law.

Subsection (c) provides that the water rights confirmed in the Agreement will be governed solely as provided in the Agreement and that the claims with respect to Federal reserved rights will be extinguished upon the entry of the final consent decree. The section makes it clear that whatever the status and characterization and administration of the water rights under the Agreement when used in reservation, the rights are declared to be a Colorado State water right at the time when such rights are used off the reservation even though they will still be administered as provided in the Agreement. Should the Tribe use the right on reservation at the later time, it will still be administered as provided in the Agreement. As a State water right off the reservation it will be in the precise same status with respect to any out of state use as any non-Indian, non-Federal holder of a Colorado State water right. Sena-

tor McClure and Senator Wallop explained the reason for their amendment as "the need to reject the assertion that a waiver of the Indian Intercourse Act is sufficient to sever the nexus between a Federal reserved water right and the land reserved. A Federal reserved water right arises solely where the failure to secure water would utterly defeat the purpose for which the lands were reserved. The suggestion that the water is no longer needed for the land defeats the only justification for the right to exist at all." The Committee then adopted the amendment. The Committee has no objection to the relinquishment of a Federal reserved right for a State water right which may prove to be more advantageous either in terms of the purposes or places of use. The subsection makes it clear that the State water rights which are confirmed by the Agreement as modified by the Act are fully subject to the Law of the River and that the term Federal law also includes all court decrees, including *Arizona v. California*.

3. The third amendment provides that the Agreement is to be construed in a manner consistent with the provisions of this Act and that the Agreement is modified accordingly. The Act makes it clear that the water secured to the Tribes is State water and fully subject to the Law of the River as with any other Colorado State water right. Any suggestion to the contrary in the Agreement is expressly rejected. The amendment also provides that the Act and the Agreement relate only to the parties to the Agreement and the Agreement does not affect the rights of any parties not signatory to the Agreement.

4. The fourth amendment was offered at the request of the Tribes and the State of Colorado to ensure that if they were satisfied with the agreement as finally enacted the United States would not exercise its option to void the agreement. The Committee concurs in the request and believes that the Tribes and the non-federal parties should have the option upon enactment to either concur in the settlement or continue the litigation. The agreement as modified and confirmed by this Act is the position of the United States and no Federal agency should have the option of voiding that position.

SECTION-BY-SECTION ANALYSIS

The following section by section analysis is of S. 1415 as introduced and referred to the two Committees. Both Committees have recommended amendments to various sections. The following discussion indicates where an amendment was recommended and by which (or by both) Committees. Unless otherwise indicated in the discussion of the amendments, the following description represents the views of the two Committees.

Section 1. Short title

The section provides that the bill may be called Colorado Ute Indian Water Rights Settlement Act of 1987.

Section 2. Findings

This section sets forth the congressional findings upon which the legislation is premised.

Section 3. Definitions

This section defines certain terms used in the Act.

Section 4. Project reserved waters

Subsection (a) authorizes the Secretary of the Interior (the Secretary) to use water from the Animas-La Plata and Dolores Projects to supply the project reserved water rights of the two Tribes in accordance with the Agreement. Subsection (b) provides that federal reclamation laws shall not apply to the project reserved water supplied to the Tribes from the projects except to the extent that those laws may also apply to the Tribes' other reserved waters.

Both Committees have recommended amendments which propose a complete new text. The descriptions of those amendments are found in the section on Committee amendments. Both Committees wish to emphasize that the provisions relating to Reclamation law deal solely with the two projects and do not waive those provisions of Reclamation law which are generally a part of the Law of the River otherwise applicable to any water from the Colorado and its tributaries.

Section 5. Tribal water use contracts

Subsection (a) authorizes each Tribe, subject to the Secretary's approval, to enter into water use contracts to sell, exchange, lease, or otherwise temporarily dispose of water in accordance with Article V of the Agreement. The Tribes are not, however authorized to permanently alienate any water right. Subsection (c) states that the authorization provided for in subsection (a) shall not amend, construe, supersede, or preempt any state law, federal law, interstate compact, or international treaty that pertains to the Colorado River or its tributaries.

Subsection (b) sets forth the procedures and criteria by which the Secretary shall review and approve or disapprove of any water use contract submitted by a Tribe.

Subsection (d) provides that the proceeds from a water use contract may not be used for per capita payments to members of either Tribe.

Both Committees have recommended amendments to this section which include a substitute test. A description of those amendments is found in the section on Committee amendments.

Section 6. Repayment of project costs

Subsection (a) provides that the Secretary shall defer, without interest, the repayment of the construction costs which are allocable to each Tribe's municipal and industrial water allocation from the Animas-La Plata and Dolores Projects until water is first used. Operations and Maintenance (O&M) costs are likewise deferred. When an increment of its allocation is first used by a Tribe, repayment of that increment's pro rata share of construction costs commences and the Tribe begins to bear the pro rata share of O&M costs.

Subsection (b) makes the same provisions for each Tribe's agricultural irrigation water allocation from the two projects, except that O&M costs are deferred only for the Animas-La Plata Project.

Subsections (c) and (d) provide for further deferrals of the financial obligations of the Tribes with respect to the Animas-La Plata and Dolores Projects under certain circumstances.

Subsection (e) defines when water shall be deemed to be used by the Tribes for the purpose of determining when their financial obligations pursuant to subsections (a) through (d) are triggered.

Subsection (f) authorizes the appropriation of such funds to the Secretary as are needed to pay for the O&M costs which the Secretary is to bear pending the use of water by the Tribes.

Subsection (g) implements a provision of the June 30, 1986, Animas-La Plata Project cost sharing agreement. It provides that the costs of the Animas-La Plata Project which are in excess of the irrigators ability to repay and which are therefore to be repaid from the Upper Colorado River Basin fund shall be so repaid in 30 equal annual installments from the date that water is first available for use.

The Select Committee has recommended amendments to this section which are described in the section on Committee amendments. The Committee on Energy and Natural Resources concurs in the amendments and specifically agrees with the amendment to subsection (g).

Section 7. Tribal Development Funds

Subsection (a) established a tribal development fund for each Tribe and authorizes the appropriation of a total of 49.5 million payable in three annual installments to the two funds.

Subsection (b) provides for the additional payment of interest if the three annual installments authorized by subsection (a) are not made as called for by that subsection.

Subsection (c) set forth how moneys in the two funds shall be invested by the Secretary and the process by which each Tribe may submit its own tribal investment plan. Further provision is made for the submittal by the Tribes to the Secretary of economic development plans for the expenditure of the monies in a fund.

Subsection (d) provides that no part of the principal of the tribal development funds, or of the income accruing from such funds, shall be distributed to a member of either Tribe on a per capita basis.

The Select Committee reported amendments to this section which are described in the section on Committee amendments.

Section 8. Waiver of claims

This section authorizes the Tribes to waive and release claims concerning or related to the water rights described in the Agreement and conditions the performance of the Secretary's obligations under the act upon the Tribes' execution of such waivers and releases.

Section 9. Administration

This section authorizes the Secretary to comply with the administrative procedures set forth in Article IV of the Agreement when

exercising his authority to administer water rights on the Tribes' reservations.

The Select Committee reported amendments to this section which are described in the section on Committee amendments.

Section 10. Indian Self-Determination Act

This section provides that design and construction of the Animas-La Plata and Dolores Projects by the Bureau of Reclamation shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act. Any preference provided the Tribes by virtue of this section shall not detrimentally affect the construction schedules of the projects.

The Select Committee reported amendments to this section which are described in the section on Committee amendments.

Section 11. Rules of construction

This section provides how the act shall be construed.

Both Committees reported amendments to this section which are described in the section on Committee amendments. The Select Committee redesignated subsection (b) as a new section 12. Section 12 would be redesignated as section 13.

The amendment from the Committee on Energy and Natural Resources is to the measure as amended by the Select Committee.

Section 12. Effective date

This section provides that sections 4(b), 5, and 6 shall take effect on the date on which the final consent decree is entered by the Colorado District Court. This section further prescribes how monies appropriated to the tribal developmental funds shall be handled pending the entry of the final consent decree or in the event the decree is not entered by December 31, 1991.

No amendments were adopted by either Committee other than redesignating the section as section 13 due to the Select Committee's amendment to section 12. The Committee on Energy and Natural Resources also recommends a new section 14 which is described in the section on Committee amendments.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 22, 1988.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1415, the Colorado Ute Indian Water Rights Settlement Act of 1987.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

C.G. NUCKOLS

(For James L. Blum, Acting Director).

CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE

1. Bill number: S. 1415.
2. Bill title: The Colorado Ute Indian Water Rights Settlement Act of 1987.
3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources August 3, 1988.
4. Bill purpose: S. 1415 would implement the water rights settlement agreement entered into on December 10, 1986 by the Colorado Ute Tribes, the Federal government, the State of Colorado, and several water conservation districts. The settlement contains a cost-sharing agreement for construction of the Animas-La Plata project and plans for allocating water from the Animas-La Plata and Dolores projects.

Section 4 of S. 1415 would authorize the Secretary of the Interior to use water from the Animas-La Plata and Dolores projects to supply water to the Ute Mountain Ute and Southern Ute Indian Tribes (Tribes) in accordance with the agreement. This section and section 5 contain language limiting the application of federal reclamation law and clarifying that water supplied to the tribes is subject to state water law.

Section 6 would specify terms for the deferral and/or repayment of the construction, operation, maintenance, and replacement costs allocated to the tribes as a result of the agreement. Section 6 would also authorize the appropriation of funds to cover the annual operation, maintenance, and replacement costs as specified in the bill. This section would also specify repayment procedures for irrigation water provided to the tribes, including a requirement that repayment above the ability of the tribes to repay be repaid from power receipts in the Upper Colorado River Basin Fund.

Section 7 would establish two tribal development funds and would authorize the appropriation of a total of \$49.5 million over three fiscal years to be deposited into the funds. Within 60 days of appropriation of the funds, the Secretary would be required to disburse the funds to the tribes in accordance with formulas specified in the bill. If funds are appropriated but not disbursed within the time specified in the bill, the tribes would also be entitled to interest on the unpaid amounts. This section also contains provisions for the investment and use of the tribal development funds.

Other sections of the bill would give the tribes the authority to waive or release certain water rights claims and would stipulate that the obligations of the Secretary as specified in this bill would only be in force when the tribes execute those waivers. They would also clarify Congressional intent with regard to the marketing of water secured by the agreement and would specify the effective date of the bill.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993
Authorization level.....		19.5	15.0	15.0	
Estimated outlays.....		19.5	15.0	15.0	

This bill is closely tied to the construction of the Animas-La Plata and Dolores water supply and storage projects, and much of this bill's budget impact would not occur until after these projects are completed. These projects have been authorized by separate legislation and are currently receiving appropriations. The Dolores project is roughly two-thirds completed, and is scheduled to begin operating around 1994. Construction of the Animas-La Plata project has not begun. If funds are appropriated and construction proceeds, it could begin operating around the year 2000. The water rights settlement that would be implemented by this bill is required for construction of Animas-La Plata because it specifies the cost-sharing agreement between the federal government and the nonfederal entities involved in the project, which include the State of Colorado and several water conservation districts. Under this cost-sharing agreement, the federal government would provide during construction roughly \$300 million of the project's \$500 million total cost.¹ Some of these costs would be repaid once the projects are operating.

The costs of this bill would be in budget functions 300 and 450.

Basis of estimate: This estimate assumes that the bill would be enacted early in fiscal year 1989, and that the full amounts authorized would be appropriated beginning in fiscal year 1990. The estimated outlays reflect an assumption that the Secretary would establish the tribal development funds shortly after the funds are appropriated.

Under the water rights settlement agreement, the tribes would be provided around 60,000 acre-feet of water annually—divided roughly equally between irrigation water and municipal and industrial water—and would have to pay a prorated share of the construction costs. Based on information provided by the Bureau of Reclamation (BOR), CBO estimates that the total payments to the federal government would be roughly \$6 million a year for the municipal and industrial water once both projects are completed. If the tribes do not begin to use the water once it is available to them, the bill would authorize the Secretary to pay their share of the operations and maintenance costs. CBO has no basis for predicting whether this would occur, but if it does, the cost to the federal government would be around \$500,000 annually.

CBO estimates that the construction costs associated with irrigation water used by the tribes would total \$60 million to \$70 million. We cannot estimate how much of this amount would be repaid, however, because that depends on where the water is used. Repayments are deferred if the water is used on tribal lands, as provided by the "Leavitt Act" (25 U.S.C. 386a). If the water is used on non-

¹ Figures in 1985 dollars.

tribal lands, however, the bill would direct the Secretary to defer repayment of the construction cost above the ability of the tribes to repay, and to use Colorado Storage Project receipts instead. Based on information from BOR, it appears that the ability of the tribes to repay would cover around 10 percent of the allocated costs.

According to the Bureau of Reclamation, the tribes might attempt to sell most of the water and use the receipts from the sale to pay the construction and operations and maintenance costs. The "Law of the River" may affect the tribes ability to market the water, however, because existing compacts and court decisions prohibit sales of water from the upper Colorado River basin (the State of Colorado) to the lower basin, which includes California. CBO cannot estimate what effect this would have on the tribes' ability to repay costs.

6. Estimated cost to State and local governments: The cost-sharing agreement embodied in the water rights settlement and implemented by S. 1415 would require the State of Colorado and several water conservation districts to pay approximately \$70 million (18 percent) of the cost of constructing phase I of the Animas-La Plata project and approximately \$130 million (100 percent) of the phase II construction costs. In addition, the agreement would require non-federal, non-Indian beneficiaries to pay approximately \$200 million of the project's costs after construction is complete, primarily through water repayment contracts and power revenues.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Theresa Gullo and Michael Sieverts.

10. Estimate approved by: Robert A. Sunshine (for James L. Blum, Assistant Director for Budget Analysis).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committees make the following evaluation of the regulatory impact which would be incurred in carrying out S. 1415.

The bill is not a regulatory measure in the sense of imposing Government-established standards on private individuals and businesses. However, it should be noted that the Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe may be responsible for the payment of certain costs associated with the use of water provided by the Dolores or Animas-La Plata Projects.

No personal information would be collected in administering the measure. Therefore, there would be no impact on personal privacy.

Other than the paperwork normally associated with the contracting activities authorized by the bill, little, if any, additional paperwork would result from the enactment of S. 1415, as reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee on Energy and Natural Resources from the Department of the Interior setting forth executive agency recommendations regarding S. 1415 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, October 19, 1987.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is to present our views on S. 1415, the "Colorado Ute Indian Water Rights Settlement Act of 1987."

As you are aware, on December 10, 1986, the two Colorado Ute Tribes, the State of Colorado, several other parties and representatives of the Federal Government entered into a "Final Settlement Agreement" for the purpose of settling the outstanding water claims of the tribes on several streams in southwest Colorado. In this instance, as is typical in situations like this one, exercise of the 1868 priority date of the tribes' Federal reserved water rights claims could severely disrupt the existing regimen of water use on those streams. By way of compromise, and in an admirable display of community spirit, the tribes have agreed to forego this early priority date in return for water supplied from the Dolores and Animas-La Plata Projects.

We support legislation to implement the December 10, 1986, Final Settlement Agreement. However, as presently drafted, S. 1415 differs from the Final Settlement Agreement in several important respects. We stand ready to work with the non-Federal parties on legislation consistent with our previous agreements regarding Ute Indian water rights and construction of the Animas-La Plata Project.

We want to emphasize the interests we have had in pursuing the Animas-La Plata Project. This Administration has long had as a standard for new water projects that the projected long-term benefits of the project must at least equal its projected costs. Under this standard, the Animas-La Plata Project is not economically feasible at current discount rates although it would be considered economically feasible at its originally authorized discount rate of 3.25 percent.

In evaluating this project, we have considered the benefit/cost standard, non-Federal cost-sharing, and water rights settlement concerns. We have, therefore, decided to participate in the Animas-La Plata Project because it combines Federal construction expenditures with non-Federal monies to produce a project that provides for water development and settles the Indian water claims.

The Animas-La Plata Project will provide a means to satisfy the water claims of the Colorado Ute tribes, while leaving intact the historical uses already in place on these streams. As trustee for these tribes, the Department of the Interior desires to see the tribes establish secure and valuable water rights that will be of true benefit to the tribes, rather than mere "paper" water rights. The project provides an opportunity to achieve these objectives.

Without doubt, the single most controversial aspect of this bill is Indian water leasing. The bill provides for the tribes to have the opportunity to lease water provided by the settlement for off-reservation use both in the State of Colorado and out-of-state. We must emphasize here that the December 10, 1986, agreement provides for

in-state leasing subject to Colorado procedural law, and for out-of-state leasing subject to a judicial determination of the tribes' right to do so given the "Law of the River" and Colorado's anti-export statute. In other words, there was to be no guarantee, either in the agreement or in the legislation, that the tribes would be able to lease out-of-state, but neither would there be a prohibition.

If the right to lease out-of-state the water provided by this settlement is established by the tribes judicially, we expect that at least two benefits would result:

- For the tribes, water from the settlement would become a source of capital to plan and develop reservation economies.
- For the United States, Indian water leasing would establish an improved potential for the economic use of project water and thereby enhance project repayment.

The December 10, 1986, Final Settlement Agreement requires legislation to implement some of its provisions. The agreement also provides that before the settlement can become effective, the State of Colorado, the tribes and the United States must each certify that the legislation is satisfactory. In the months following approval of the settlement agreement, we worked with the non-Federal parties to draft that implementing legislation. Concern by the non-Federal parties that the implementing legislation be introduced in time for enactment by the 100th Congress led to the introduction of S. 1415 and H.R. 2642 before we had come to full agreement on certain of its provisions. In addition to those unresolved issues, S. 1415 and H.R. 2642 introduce some new issues which we have not had an opportunity to discuss with the non-Federal parties, and change some language we had previously agreed upon. We have enclosed a background memorandum which presents the key differences between the most recent negotiating draft and S. 1415.

It is our belief that S. 1415 could be an appropriate legislative framework within which to implement the Final Settlement Agreement if it were conformed generally to the Federal negotiating position as discussed in the enclosure to this letter. We do believe that certain provisions of this negotiating draft (e.g., sections 4 and 5) are more important, and therefore less open to subsequent negotiations between the parties, than others.

In summary, we are persuaded that further meetings of the parties are necessary before the responsible Senate committees complete their work on S. 1415. We would be pleased to participate in any efforts that your Committee might undertake to facilitate the resolution of these issues. We currently anticipate that negotiations among the parties will resume by mid-October.

A similar letter has been sent to Senators Armstrong, Bingaman, Wirth, Domenici, and Inouye.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

WAYNE N. MARCHANT,
Acting Assistant Secretary.

Enclosure.

DEPARTMENT OF THE INTERIOR, COMPARATIVE ANALYSIS OF KEY DIFFERENCES BETWEEN S. 1415 AND THE MOST RECENT FEDERAL NEGOTIATING DRAFT

In this memorandum, we present a comparative analysis of the most recent draft bill prepared as the result of negotiations among the parties, which preceded introduction of S. 1415 (and its House companion, H.R. 2642), and the provisions of S. 1415, as introduced. For this analysis, we have assumed that S. 1415 represents the current position of the non-federal parties. All references below to the "Agreement" are to the December 10, 1986, Colorado Ute Indian Water Rights Final Settlement Agreement.

1. *Sec. 4 (Title), page 4, line 12.*—At the time of the last negotiation, the title of section 4 in the federal version was "TRIBAL USE OF WATER" and in the non-federal version was "TRIBAL WATERS." In S. 1415 it is "PROJECT RESERVED WATERS." This new bill language reflects a major change made by the non-federal parties in the scope of this entire section.

2. *Sec. 4(a), page 4, lines 13-17.*—The previous non-federal position was that 4(a) should read as follows:

Sec. 4. (a) The Secretary is hereby authorized to utilize water from the Animas-La Plata and Dolores Projects in satisfaction of the federal reserved water rights claims of the Tribes.

We rejected that language because we felt it did not state clearly enough that the water to be received from the projects is federal reserved water. We suggested that it read instead:

Sec. 4. (a) The Secretary is hereby authorized to use the Animas-La Plata and Dolores Projects to supply reserved water to the Tribes.

The non-federal parties apparently did not accept our language. They have now changed the language so that S. 1415 reads:

[For 4 (a)] The Secretary is hereby authorized to use water from the Animas-La Plata and Dolores Projects to supply the project reserved water rights of the Tribes in accordance with the Agreement.

The concept that the Tribes will be receiving the usual *Winters* doctrine type federal reserved water through the projects seems even less clear in the new non-federal language than it was in the previous non-federal language. In fact, the language of S. 1415 on its face appears to be establishing a special kind of water right ("project reserved water rights") unique to this settlement.

3. *Sec. 4(b), page 4, lines 18-25, and page 5, lines 1-3.*—The federal position was that section 4(b) should read:

[4(b)]: With respect to the Tribes' reserved water supplied from the Dolores and Animas-La Plata Projects, Federal reclamation laws shall not restrict the use, or the sale, exchange, lease, or other temporary disposal, of those reserved waters by the Tribes and their lessees, and this water will be treated in all respects in the same manner as the rest of the Tribes' Federal reserved water.

The non-federal parties wanted to delete the end of our sentence, "and this water will be treated in all respects in the same manner as the rest of the Tribes' Federal reserved water" and insert instead:

except to the extent that those laws may also restrict the use of the Tribes' other reserved waters; provided, that under no circumstances will Federal reclamation laws be waived or modified by this subsection insofar as those laws are required to effectuate the terms and conditions contained in Article III, section A, subsection 1 and 2, and Article III, section B, subsection 1 of the Agreement.

At the last negotiation, we rejected this non-federal suggestion. Our concern about substituting the "except" clause of this non-federal language in lieu of the end of our language was twofold. First, we felt our language more clearly expressed the principle that the water received by the Tribes from the projects is federal reserved water to be treated the same as the rest of the Tribes' federal reserved water. Second, the non-federal language does not correctly reflect the terms of the Agreement concerning the application of federal reclamation laws to the Tribes' reserved water. (For example, the Agreement totally excludes the application of federal reclamation law to the off-reservation use of the Tribes' reserved water, both project and non-project, within the State. See p. 60 of the Agreement.)

We also objected to the proviso portion of this non-federal language. It is unnecessary since the problem it seeks to address is taken care of by the rule of construction in section 11(a) that this Act shall be construed in a manner consistent with the Agreement. Also note that if such language were necessary here, then provisos would be needed in a number of other places in the Act to make clear that the language of this Act is not to be interpreted in a manner inconsistent with the Agreement.

The language of S. 1415 makes some additional changes to the previous non-federal version of section 4(b). On page 4, line 19, the word "Tribes'" has been deleted before "reserved water" and the word "project" has been inserted instead; and on page 4, line 22, the word "project" has been added before "reserved waters." These changes, like the most recent non-federal change to 4(a), make it appear that the water given to the Tribes from the projects is a special kind of water unique to this settlement instead of making clear that it is typical federal reserved water.

S. 1415 also deletes the phrase "restrict the use, or the sale, exchange, lease, or other temporary disposal of" and instead inserts "apply to." See page 4, lines 21-22. Similarly, "restrict the use of the Tribes' other reserved waters" has been changed to "apply to the other reserved waters of the Tribes" on page 4, lines 23-24.

4. *Sec. 5(c), page 6, lines 12-18.*—There has been a long-standing disagreement over this provision. The non-federal parties wanted it in the bill as a statement expressing the neutrality proviso in Article V, Section B(b) on pages 60-61 of the Agreement. The federal parties wanted it deleted because of the difficulty in achieving a neutral statement, as required by the Agreement. We suggested at an earlier date that instead of this subsection, the phrase "in ac-

cordance with Article V of the Agreement" be added in section 5(a) to take care of the non-federal parties' concern. The non-federal parties accepted our suggestion with regard to section 5(a) (see lines 8-9 on page 5 of S. 1415), but insisted that section 5(c) (old section 5(d) remain in the bill as well.

The previous non-federal version of the language of section 5(c) included the phrase "[w]ith respect to paragraph b of section B, Article V of the Agreement" at the beginning of the sentence. That phrase, limiting this provision to out-of-state use only as provided in the agreement, was added by the non-federal parties when we pointed out that without it the provision was overbroad. S. 1415 has deleted that phrase.

5. *Sec. 6(d), page 9, lines 13-21.*—This provision in the text of the draft bill was inserted by the non-federal parties. The federal parties agreed to it but only if the phrase "to the Secretary's satisfaction" were inserted in line 17 after "demonstrates" and the word "gross" inserted in line 18 before "revenues." The non-federal parties have rejected these changes.

S. 1415 differs from the previous non-federal version only in adding a title to this section, "Tribal Deferral," which seems a misnomer since this is clearly a secretarial deferral.

6. *Sec. 7(b), page 11, lines 9-17.*—The federal and non-federal parties were previously in agreement on the language of this provision. S. 1415 has interjected a new difference by adding the phrase "in addition to the full contribution to the Tribal Development Funds" in lines 12 and 13.

7. *Sec. 7(c)(3) (last sentence), page 13, lines 10-15.*—The federal version of the last sentence of this paragraph contained the additional language "the approval of an economic development plan or from" after the words "arising from" on line 12. The non-federal parties rejected that language and S. 1415 continues to delete it.

8. *Sec. 7(e), page 13, lines 20-23.*—This provision was added to the draft legislation by the non-federal parties. Their previous language was as follows:

[Sec. 7] (e) Neither the Tribes nor the United States shall have the right to void the Agreement or to set aside the Final Consent Decree solely because subsections (c) or (d) are not satisfied or implemented.

The federal parties wanted this provision deleted as unnecessary and misleading, since the Tribes and the United States do not have the right anyway. (The only permissible grounds for voiding the Agreement or setting aside the Final Consent Decree are set out in the Agreement.) In S. 1415, the non-federal parties have deleted the words "void the Agreement or" after "right to" in line 22 on page 13 and have changed the language "subsections (c) or (d) are" to "subsection (c) is" in line 23 on page 13, but have otherwise kept this provision.

9. *Sec. 9 (Administration), page 14, lines 10-15.*—Prior to the introduction of S. 1415, the federal and non-federal parties had agreed on the wording of this provision. A new difference has been introduced by the language of S. 1415, which deletes the words "governing the water rights confirmed in the Agreement and Final

Consent Decree to the extent provided" after "procedures" and before "in Article IV" in line 14 on page 14.

10. *Sec. 10 (Indian Self-Determination Act), page 14, lines 16-25.*—The previous non-federal version of the first three lines of this provision is the same as the language of S. 1415, which reads:

The design and construction functions of the Bureau of Reclamation with respect to the Dolores and Animas-La Plata Projects shall be subject . . .

The federal parties objected to that language as overbroad and instead suggested the following:

The functions of the Bureau of Reclamation under this Act with respect to each Tribe shall be subject . . .

The rest of the language of this section was previously agreed to by all parties; S. 1415 has created a new difference by deleting the phrase "under this Act" after the word "Tribes" in line 23 on page 14.

11. There are a few other differences of a more editorial nature which should also be noted.

(a) *Secs. 3(2) and 3(3) (project definitions), page 3.*—At the end of the definition of the Dolores Project (Sec. 3(3), lines 21-23), the non-federal parties continue to include the language "and as further authorized by the Colorado River Basin Salinity Control Act (98 Stat. 2933; 43 U.S.C. 1591)." The federal parties wanted that language deleted because the purpose of this provision is simply to identify the project; it does not definitively state all the authorizing statutes.

The language of S. 1415 also creates a new difference in previously agreed upon language in this definition as well as in the definition of the Animas-La Plata Project (Sec. 3(2)). It has deleted the phrase "as amended by" (on lines 14 and 20) between the two cites and has replaced it with "and" on line 14 and with a comma on line 20.

Note that our suggested compromise (that both definitions end after the cite to the CRSP Act on lines 13 and 20) has apparently been rejected by the non-federal parties.

(b) *Sec. 5(b)(2), page 5, lines 21-25, and page 6, lines 1-7.*—S. 1415 creates a new difference in previously agreed upon language by adding "under this paragraph" after "required" in line 2 on page 6.

(c) *Sec. 6(b)(1), page 7, lines 17-25, and page 8, lines 1-9.*—S. 1415 creates new differences in previously agreed upon language by deleting "as provided in" after the Leavitt Act cite and before the cite to section 4 of the CRSP Act (at the beginning of line 24 on page 7) and inserting "and" instead. S. 1415 also has added "commonly referred to as the 'Colorado River Storage Project Act'" on line 25 on page 7 and line 1 on page 8, although that cite is to a single provision, not to the whole Act.

(d) *Sec. 11(b), page 15, lines 4-7.*—S. 1415 creates another new difference by removing the provision concerning the rights of individual tribal members from section 4 (our 4(c), the non-federal parties' previous 4(b)) and placing it here in the Rule of Construction section, as 11(b). Presumably this was done in conjunction with the

non-federal decision to restrict the scope of section 4 to project reserved waters.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committees note that no changes in existing law are made by the bill, S. 1415, as reported.

○